



COMMUNITY DEVELOPMENT DEPARTMENT

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

WORKSHOP 7:00 PM

December 16, 2008

The meeting was called to order at 7:00 p.m. by Chair Koepp-Baker in the El Toro Room of the Morgan Hill Community Center. All present recited the pledge of allegiance to the flag in unison.

Declaration of posting: Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Koepp-Baker opened, and then closed the public comment period as there were none present to address items not on the agenda.

Agenda:

1. Amendments to development agreements to implement reduction in Below Market Rate (BMR) Commitments in Exchange for Project Enhancements

- A) Planning Commission ~~ Developer Discussion: Review proposed Amendments to Residential Development Agreements allowing reduction in project below market Rate (BMR) commitments in exchange for project enhancements that provide public benefit.
- B) Determine appropriate level of project enhancements

Workshop:

Chair Koepp-Baker welcomed those present as she announced that this work be an interactive, participative workshop.

Commissioners Acevedo, Lyle, Mueller, and Tanda were present, along with PM Rowe, SP Linder, and Minutes Clerk Johnson.

Several interested persons (developers) from the community were present. Those speaking with the Commissioners were:

Don Lapidus, Solona Ct., Mt. View
Dave Sanson, 333 Civic Dr, Pleasant Hill

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 2

Dick Oliver, 385 Woodview

Rocke Garcia

Maureen Upton, 8339 Church St., Gilroy

Scott Schilling, 16060 Caputo Dr. #160

PM Rowe gave the staff report, and provided an overview of the events which have led to this workshop. He noted the matter has been in discussion several times both at the Planning Commission and City Council meetings. "Largely due to this economic downturn," PM Rowe said, "the Planning Commission made recommendations to the City Council regarding variations on BMR requirements. Subsequently, the City Council made recommendation to waive and/or extended certain BMR requirements to April 30, 2009 for phases of various projects, and sending the matter back to the Planning Commission to work out details. On review, Planning Staff extended the deadline to June (30/09) as the date because of additional time needed to amend the development agreements.

This workshop is for staff to get direction from the Planning Commission for project enhancements and methodology of how to administer the program. Staff recommendations were in distributed exhibits, he said. "Furthermore, methodology for implementation still can be worked on at the January 27, 2009 when the Commissioners will have public hearings on each of the applications in the packet," PM Rowe advised.

PM Rowe continued, saying, "Staff needs to know which of the staff recommendations are acceptable/not and make those applicable to the applications, and then with Planning Commission recommendations applied, the matter will be considered by the City Council in February, 2009."

SP Linder was present to explain the recommendations, attachments with explanation of enhancements as well as some proposed development agreement modifications. Added to the recommendations:

- ✓ housing mitigation fee (recommendation 50% reduction)
- ✓ "any difference in points in the Housing Needs & Housing Types categories due to the temporary waiving of BMR requirements will not cause the City to rescind the development allotments
- ✓ indemnification clause: applicants sign hold harmless being drafted by City Attorney

The implementation schedule is slated to change, with recommendation from the Planning Commission (meeting of January 27) having anticipated action at the Council meeting of February 18, 2009.

Commissioner Lyle noted that when the Planning Commission talked about this recently, it was said to have the program (BMR reduction/project enhancements) cover the period up to January, 2010, and then revisit the matter to see if should be extended. PM Rowe responded, "As it is going now, 2009 will be gone before it is implemented." He went on to tell when (and how many) building permits had been issued recently. PM Rowe stated, "Staff thinks a one-year extension might be possible."

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 3

Commissioner Lyle said it was conceivable that new 2010-11 projects might have issues as well. PM Rowe agreed, noting that circumstances might have changed: land cost now could be less but those projects 'in the hopper' now contain land bought at premium price - and that makes a big difference.

Chair Koepp-Baker asked, "Are we still at the June 30, 2010 target date?" PM Rowe responded, "Yes. That's what the City Council said."

SP Linder said she had been given the job of trying to figure out what the trade-off or enhancements would be. "We tried to find a common dominator and came up with:

- ◇ Minimum 90 point on BIG certification for projects that have gone thru plan check; or
- ◇ A minimum of 110 points on BIG certification for projects that have not gone thru plan check; or
- ◇ Additional 10 percent secondary units (on larger lots)

Then she explained that the next task was to figure out how to incrementally reduce the number of BMRs based on the number of building permits commenced. The example provided for the workshop opted for a basic quarter reduction in the tables for each of the projects. Based on an incentive recommended by the Commission and approved by the Council which allows a 50-percent reduction in the fee an applicant agrees to pay in-lieu of the BMR commitment or when a fractional share, less than .5 of a BMR is owed upon completion of the project. We returned to a basic mathematical process for determining the BMR reduction, looked at when housing mitigation fee 'kick in' (already established) so they work down to zero. "However," SP Linder said, "that didn't work exactly in smaller phases, the difficulty being: keeping with .5 mitigation fee. We are still working on, trying to determine the best way to accomplish it. The difficulty now is trying to balance a feasible number housing starts with an equitable reduction of BMRS. We want to produce something that will really be feasible for builders to take to the bank."

PM Rowe observed it might be best to start with the enhancements first. The question is: what will be an appropriate enhancement; what is the builder offering to the City in exchange for reduced BMRs?

Discussion followed regarding the need to have the building community share ideas, along with perusal of the staff recommendations. Also discussed:

- projects not yet plan-checked could more easily achieve the BIG numbers
- projects which staff recommendation already scores above 90 points. The Schilling project, for example, already scores 92 and has already met the requirements for maximum points
- what 90 means to developers; many already have maximum points in Quality of Construction so can also score under BIG
- to reach a BIG score higher than 90 points, some projects would have to go back through the building permit plan check process due to structural changes.
- 90 points represents a base BIG number based on the input from applicants.
- for those developers who have not gone through plan checks already, is it reasonable go above 90.

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 4

Chair Koepp-Baker invited participation from the audience.

Commissioner Mueller asked, is 90 reasonable?

{Mr. Oliver} With that, we're looking at about \$ 3,000 per unit

Chair Koepp-Baker said as she had been speaking with the developers, it seems they may be in favor of whatever to be able to break ground.

(Don Lapidus) We are already doing a lot toward the enhancements listed, and all houses are started, we are already on track for BIG and other enhancements; it would be nice to get some recognition for already doing it.

(Mr. Garcia) take large houses in R-1 and increase granny units to 2, and then set up green for options in models and give buyers opportunity to purchase. I think a commitment to increase the granny units by 10%, and also offering to build it green in models for sale.

Commissioner Acevedo asked: for green must you offer different items for the buyers to choose?

{Mr. Garcia} It's amazing how people pick and choose. Buyers are just getting used to BIG. It's still a buyers market.

{Mr. Oliver} to have options for buyers, there are some things we developers must put in automatically but buyers do want options.

{Mr. Garcia} we all will meet the BIG requirements

{Mr. Oliver} that will be something of real value to buyers and can be offered at less cost

SP Linder whatever you are offering, it must be done in the phase being offered, so if you are committing to 90, it must be within the phase requesting the BMR reduction.

Commissioner Acevedo interjected: the City must receive quid pro quo there needs to be something more solid from this category and then they must pick. There needs to be 'picks' from a range of items for the City.

{Mr. Garcia} That sounds good, but we are locked in when building.

Commissioner Acevedo the City – and buyers - need to be able to see something; if they cannot see 90 BIG or some granny units, the options must be solid and locked in for the buyer.

Discussion followed regarding:

- must make commitment first
- those who have gone through plan check are more limited
- necessity of meeting minimum requirements

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 5

- need to have the requirements of the program tailored so it will work well
- whole lot of problems with options

{Mr. Sanson} feels that is what many are trying to do, e.g., Delco

{Ms. Upton} how did staff come up with 110 points for Diana Chan; SP Linder explained it was a halfway point between the recommended 90 point min. and the 130 optimum points in the revised 2008 RDCS criteria.

Responding to a question from Commissioner Tanda, SP Linder said staff felt the majority of the projects could reach 90 without adding considerably to buyer cost and therefore 90 seemed a common denominator.

Commissioner Tanda asked if it would be simpler rather than a dollar extreme, not do BMR requirement at all? PM Rowe and SP Linder reiterated that City Council directive was to receive something in exchange for a reduction in the number of required BMRs. There must be some public benefit and had suggested looking at affordable housing with secondary units or BIG. Staff had been directed to work with BIG and/or create a mechanism for reducing the number of BMRs in the initial phases of the projects.

Commissioner Tanda asked if gaining a public benefit (with a tradeoff for environmental with BIG), could be satisfied without redesigning the projects? “For some that would mean doing nothing, for others, upgrading plans. An easy thought: if the project could be exempted from the BMR requirement, paying the City would be a public benefit.”

Commissioners Mueller/Lyle quickly reminded the Commissioners they were not speaking to not paying fees.

Commissioner Tanda continued, “If instead of BIG or other environmental assessment, the developer pays a fee to the City - and most are already doing some form of BIG - the job could pay dollars. Gathering up dollars over the next two years must be some public benefit.

PM Rowe spoke on the potential for lowering utility costs, which would be good for the buyer and an opportunity for the developers to recover some costs.

{Mr. Schilling): reason building community came to Planning Commission and City Council ~~ trying to stay alive. The biggest public benefit: is to have deals come together. We had an initial review based on discussion with the Planning Commission and City Council, we dropped prices and had two contracts within two weeks. The public benefit is not just BIG or energy star, but being able to buy with lowered costs and for us that means being able to start new units.

{Ms. Upton} for my project, I don't want to make getting started any more difficult by having higher points (110=90+ 20 points) as first couple of phases are more expensive. It is important to keep consistency and not to have to increase points.

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 6

Discussion followed regarding what is important to buyers now:

- ✧ not BIG or Energy Star
- ✧ best deal ~~ strictly price based
- ✧ buyers waiting to see if more government programs

{Mr. Lapidus} asked for explanation of the fee reduction, which SP Linder provided.

Commissioner Mueller said “I think I’m hearing 90 points for those projects with completed plan checks. There might be some increase in costs; but the BMR requirement would go incrementally down, so there would be a net gain to the developer. Is this going to be too complicated for banks to understand?”

{Mr. Oliver} if it is in the development agreement, we can explain it to the banks.

There was discussion about:

- start dates for the projects
- ability to garner lending dollars from banks
- having a set 90 points without plan checks or 10% increase in granny units within same phase
- relief on BMR requirement in current phase or enhancement on future phases

SP Linder advised, “Everyone has the ability to amend the phasing plan, if they want to come back as part of a zoning amendment, it can be done.”

PM Rowe reminded of the long standing policy of the Planning Commission: when 50% of a project has been completed, then 50% of the BMRs must be completed, and must have public benefit for the projects done in phases. If the project is in its later phases, and a granny unit is warranted, then the developer must work it in.

Commissioner Mueller said, “110 - if not in plan check is probably reasonable. If the project is not through plan check, it should be pretty easy to do BIG. I think BIG will assume more and more importance – and 110 should be fairly easily done.”

Mr. Oliver asked about the issue of paying fees at the time of obtaining the permit? PM Rowe said the City was OK with the variation, but the MHUSD has not responded to inquiries. Mr. Oliver also asked for further clarification regarding specific language relating to the development agreement. Commissioner Mueller reminded that the Council had approved language forwarded to them by the Planning Commission.

Discussion ensued regarding BMR fees payments.

Developers asked questions about when credits would be counted? PM Rowe responded, “You can start the next phase, but not get credit until the phase is completed.”

Determining a consensus, PM Rowe reiterated the minimums:

- 90 points when the project is in plan check
- 110 points if not in plan check

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 7

- +10 % for granny units

Commissioner Acevedo spoke to the need for jump starting the industry locally, but noted that some haven't broken ground. "We've heard a lot of talk about projects with several phases – what of that?" PM Rowe advised that the City Council said the plan being devised should apply to all project phases thru 2009-10.

SP Linder indicated intent to review the chart/table and revise as necessary. Discussion ensued regarding the information presented within the table, frequently centering on the difficulty of dealing with uneven numbers.

Commissioner Lyle said the methodology appeared to be very complicated. He then detailed perceived inequities based on what the next phases will be. Some issues of concern:

- a five unit phase which ordinarily would have a .65 (rounded to 1) BMR commitment, is able to eliminate a full BMR
- a project can be allowed to start more units than shown (in table)
- surprise: if have to do 1/2 unit, obligation forgiven; usually if have to do 1/2 unit, then must do 1 unit

Questions regarding results of a rapid economic turnaround and the need to have more units started were discussed. SP Linder said, "Staff can expand the table to reflect more units as they are started."

Commissioner Mueller said, "We must rely on the cutoff date and perhaps show more units/phases begun. We also need to make sure there are enough tables, but make it clear that projects must begin construction by the set date."

Commissioner Lyle asked, "Where do we end up with the table? Developers must do certain a level to achieve reduction of BMRs?" He suggested that 9/30/09 might be a better end date for the complete BMR waiver and 9/30/10 for the half BMR waiver.

Developers discussed with the Commissioners various {specific} aspects of the proposed recommendations and clarified it should apply to all development.

Chair Koepp-Baker suggested having review by the Planning Commission of the table so the method of presentation could be clarified.

Payment of mitigation fees was discussed. It was noted that mitigation 'roll to subsequent phases'.

Regarding when the program would stop (if before June 30, 2009), significant discussion occurred. Also discussed: Where is the 'pay point fraction' - at the stop point or at the end of the next phase?

Commissioner Mueller advised: historically we have rolled fractional units to the end of a project; then there is payment. It seems what we should continue to do that here the

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 8

object being to have units built rather than collect money, as then the dollars would go to the City and would not provide immediate public benefit.

Presented language was discussed, with developers suggesting the presentation of more tables, and Mr. Oliver suggesting clarity regarding “BMR commitment” reduction.

PM Rowe cited the action at the October 15 City Council meeting wherein the City Council made findings for allowing the reduction in the number of BMRs. PM Rowe also advised that ultimately the recommendation date set by the Commission will go to the City Council as an amendment with the development agreement. The City Council has set June 30, 2010 as an end point for the program. If that is changed, then a new date can be put in at the time of consideration of the development agreement amendment. Commissioner Mueller suggested it would be possible to put into the language a provision for the Planning Commission to make the determination date June 30, 2011. PM Rowe responded, “We have to look at this as the original date set as the purpose was to create certainty for the builders. Remember, that is why you took the development schedule out of the development agreement.”

Mr. Oliver clarified, “If we want 2011, then it would have to go to the City Council for a change.” PM Rowe said, “Yes, and they have shown some preference for 2010.”

Commissioners discussed the 2010 date, with the following being noted:

- that is 18 months out
- if conditions do not change, then the City could look at a possible change
- 2010 appropriate for what reviewing now

Mr. Garcia spoke: We can understand and what we want is for you to understand - from a builders point of view – is that the recent financial changes are new to some, but we have been in a development recession for three years. From our standpoint, we appreciate all you are trying doing but we are scared as we don’t know what will happen.

Mr. Sanson said, “We are definitely in a housing depression – and all indications are that we will not start to recover until 2012. For certainty, the City is trying to achieve as well as financial community planned projects put on the books 3 - 5 years ago. As much as we appreciate what you are doing, it is really going to be 12 - 15 months before results can be seen. When we go to the lenders and tell those lenders we may get projects relieved from BMR requirements, there will still be uncertainty by them. Our time crunch is real, so 2010 is the very least we need. We are going to go into 2011 without getting out of this.”

Commissioner Mueller said, “Developers may have allocations to June 30, 2011 but there is no waiver of BMRs beyond 2010.”

Mr. Oliver said, “We don’t know what commitments to make if we can’t meet them. Somehow I think that this is the exact opposite of instructions given.” Discussion followed regarding possible ‘best plans of action’ to avoid loss of allocations. The developers present spoke largely to concerns of ability to obtain funding and begin projects. Other issues raised:

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 9

- offset cost huge disparity between market rate units and BMRs
- if not subject to BMR requirements, then free up dollars to build at a reduced cost which has a huge impact on financing

Commissioner Mueller explained: The City is doing about as much as it can do to have projects get the best financial picture possible. We are saying the next 12 months allows financials to look better on appraisals to get started. However, he acknowledged, it makes 2010-11 units more complicated.

In response to a comment from the floor that State law allowed 6 months between inspections, Commissioner Lyle said that the PC was discussing dates to be placed in a project's DA to document what was required for the City to waive/reduce BMR requirements.

Commissioner Lyle then noticed that one of the developers had suggested an October rather than June as a firm date, and asked why? SP Linder said she was aware that the commence construction time was different under this program with the developers having to pull permits by June 30 or 'all bets are off if sufficient progress is not made.' PM Rowe clarified that the developers must pull permits by June 30 and then the review is to be completed within 60 days. Commissioner Lyle indicated he was not in favor of the plan. Mr. Oliver said, "If we fail to do that, then our lenders would not be happy."

Discussion followed regarding standard time for obtaining permits, commencing construction, then six months for foundation, and further progression. Commissioner Lyle repeated opposition, saying the schedule could result in abuses. Commissioner Mueller suggested October would be the halfway or 'in between' point.

PM Rowe said, "The staff recommendation is to pull permits by 6/30 then by 9/30 pass the foundation inspection (with rough plumbing in) then 3 months later have the shear inspection." Following discussion, THE PLANNING COMMISSIONERS REACHED CONSENSUS TO REQUIRE THE FOUNDATION INSPECTION TO BE PASSED WITHIN 3 MONTHS OF THE PERMITS-PULLED END DATE, AND THE SHEAR INSPECTION TO BE PASSED WITHIN ANOTHER 3 MONTHS.

Mr. Oliver said, "If commence construction is by 6/30, the forms will be set and the utilities in." He went on to tell of the variety of time for various stages of construction. "So we may have to target times ahead, but offers some flexibility."

Commissioner Lyle continued to explain the need for a timeframe beneficial to the City and developers. Mr. Oliver volunteered to work with SP Linder for 'schedule firming up'.

PM Rowe reported the need to 'watch work loads for staff due to cutbacks in City departments.'

Commissioner Mueller commented, "We've talked about moving the date from 4/30/09 to 9/30/09 for commence construction. I suggest we work on a case by case for commence construction dates. State law allows for 180 days between inspections. The City wants homes – and construction to really move forward. If construction begins by 2009, but does not progress, then we will not meet the expectations of the City."

PLANNING COMMISSION SPECIAL WORKSHOP MINUTES

December 16, 2008

Page 10

Mr. Oliver raised the issue: if a project would be taken over by the bank, then the bank would not lose the BMR requirement. He suggested language changes to the development agreement for clarity.

Commissioner Mueller observed, "We are trying to be reactive to questions which may come up to the Council."

Commissioner Mueller argued the benefit of changing the firm date to 2011 from 2010. Commissioner Tanda asked, "Why are we so focused on 2009, then?" Commissioner Mueller explained, "2009 provides a complete waiver of BMRs. If 2011, we would have another year for study of the BMR reduction program. We are already five months into this year. I think we could be willing to go out another 12 months to assist the developers. It's taken five months to get into this place. I believe 2011 would provide benefit for reappraisals. The process would be: pull permits by June 30 – or on a case by case basis – the have the actual physical commence construction 9/30 with the standard commence construction provisions.

Responding to a question, PM Rowe opined, "2011 physical commencement would be the final acceptable time."

A straw vote indicated:

in favor of 2011: Commissioner Mueller and Chair Koepp-Baker;
opposed to 2011: Commissioners Acevedo Lyle, and Tanda

After the Commissioners did not reach consensus on June 30, 2011 as a date for the 'half waiver', COMMISSIONER LYLE SUGGESTED SEPTEMBER 30, 2010 (one year after the September 30, 2009 full BMR waiver date); THE COMMISSIONERS PRESENT (ESCOBAR WAS ABSENT; ONE VACANCY EXISTS) AGREED.

Noting the agreements reached, Chair Koepp-Baker declared the meeting adjourned at 9:22 p.m. as the Commissioners wished all a very happy holiday!

MINUTES PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk